

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 301 of 2000

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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CHHAGAN KESHABHAI UNDARIYA

Versus

STATE OF GUJARAT  
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Appearance:

MS SUBHADRA G PATEL for Petitioner

MR ND GOHIL AGP for Respondent No. 1, 2, 3  
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CORAM : MISS JUSTICE R.M.DOSHIT

10/03/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner challenges the order of preventive detention dated 25th August, 1999, made against him by the District Magistrate, Rajkot, under the powers conferred upon him under section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985

(hereinafter referred to as 'the Act').

The petitioner is held to be a 'dangerous person' within the meaning of section 2 (c) of the Act and his activities are found to be prejudicial to the maintenance of public order. As many as 13 offences punishable under Chapter XVII of the IPC have been registered against the petitioner. In each of the said cases, the petitioner was arrested and was also released on bail.

Amongst several contentions raised in challenge to the order of detention, the one which merits consideration is in respect of possibility of approaching the competent court for cancellation of order of release on bail made in favour of the petitioner. The Division Bench of this Court (Coram : C.K.Thakkar Actg.CJ & Mr.Justice A.L.Dave) in the matter of YUNUSBHAI KASAMBHAI GHANCHI VS DISTRICT MAGISTRATE, (LPA NO.1056/99 in SCA No. 8650/98, decided on 15th September 1999) has held the order of detention to be void on account of the failure of the Detaining Authority to consider whether the bail was likely to be continued inspite of the action being taken for cancellation of bail. Similar are the facts here. In the present case, though the Detaining Authority was alive to the fact that the petitioner was released on bail, has not considered whether he could have been prevented from carrying on his anti-social activities by moving the court for cancellation of his release on bail, and if such applications were made, the orders of bail would have been continued. The subjective satisfaction recorded by the Detaining Authority should stand vitiated for want of proper application of mind. The continued detention of the petitioner is, therefore, illegal and unwarranted.

Petition is allowed. The impugned order dated 25th August, 1999 is quashed and set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute accordingly. There shall be no order as to costs.

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